

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555(SCC)

4 - - - - - x

5 In the Matter of:

6

7 LEHMAN BROTHERS HOLDINGS INC.,

8

9 Debtor.

10

11 - - - - - x

12

13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 November 3, 2014

18 3:35 PM

19

20 B E F O R E :

21 HON SHELLEY C. CHAPMAN

22 U.S. BANKRUPTCY JUDGE

23

24

25

1 Hearing re: Doc #19888 Status Conference on Motion for
2 Omnibus Objection to Claims Re: Debtors' One Hundred Ninety-
3 First Omnibus Objection to Claims (Valued Derivative Claims)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25 Transcribed by: Dawn South

1 A P P E A R A N C E S :

2 JONES DAY

3 Attorneys for the Debtor

4 222 East 41st Street

5 New York, NY 10017-6702

6

7 BY: JAYANT W. TAMBE, ESQ.

8 LAURI W. SWAYER, ESQ.

9 JENNIFER L. DEL MEDICO, ESQ.

10

11 PACIFICA LAW GROUP

12 Attorneys for TSA

13 1191 2nd Avenue

14 Suite 2100

15 Seattle, WA 98101-2945

16

17 BY: KYMBERLY K. EVANSON, ESQ.

18 PAUL J. LAWRENCE, ESQ.

19 TAKI V. FLEVARIS, ESQ.

20

21

22

23

24

25

1 P R O C E E D I N G S

2 THE COURT: Okay. We have a lot to do today. Why
3 don't I start by getting your appearances.

4 MR. TAMBE: Good afternoon, Your Honor. Jay
5 Tambe, Lauri Sawyer, and Jennifer Del Medico from Jones Day
6 for the debtors.

7 THE COURT: Okay. Very good.

8 MS. EVANSON: Good afternoon, Your Honor.
9 Kymberly Evanson, Paul Lawrence, and Taki Flevaris here for
10 the Washington State Tobacco Settlement Authority.

11 THE COURT: Okay. All right.

12 So first let me start with I understand that we
13 received a stipulation agreement and order regarding the
14 claims and the agreed reduction of the claim amounts, and
15 including an amendment of Lehman's -- or LBHI's objection,
16 right?

17 MR. TAMBE: That's right, Your Honor.

18 THE COURT: Okay. The only question I have about
19 that, and that's driven by the error with respect to the
20 termination date of 2042 as opposed to --

21 MR. TAMBE: Correct, Your Honor.

22 THE COURT: -- 2032, right?

23 MR. TAMBE: Yes.

24 THE COURT: So the only thing that I had a
25 question about was the reservation of rights for LBSF to

1 file an adversary complaint.

2 MR. TAMBE: Correct, Your Honor.

3 THE COURT: Yeah, I just don't understand what
4 that means.

5 MR. TAMBE: What that means is what will be
6 decided in this trial is the valuation of the RFA.

7 THE COURT: Right.

8 MR. TAMBE: And Your Honor may decide it is some
9 number that is a claim or Your Honor may decide it's zero or
10 Your Honor may decide that the right valuation is
11 Mr. Gruer's (ph) valuation.

12 If the Court concludes that it's Mr. Gruer's
13 valuation --

14 THE COURT: I see.

15 MR. TAMBE: -- we will then file an adversary
16 complaint, we're still within time to do it, they've
17 reserved all of their rights to raise objections to
18 defenses.

19 THE COURT: I understand. Okay. So it's not an
20 adversary that seek a do over of what we conclude here.

21 MR. TAMBE: That would not be our intention, Your
22 Honor.

23 THE COURT: Okay.

24 MR. TAMBE: Yes.

25 THE COURT: Just didn't understand that. Okay.

1 So we'll enter that on the docket today.

2 The second thing that I wanted to clarify was the
3 times that we're spending together. So tomorrow starting at
4 9:00 and I'm going to have a hard stop somewhere around 3:20
5 to enable we to go up to the District Court. So I'm going
6 to largely leave it to you folks to tell me when you want to
7 break for lunch, how long you want to break for lunch. I've
8 got really good staying power much to the dismay of
9 witnesses sometimes, so we have to not, you know, run the
10 witnesses ragged, but I know you have an agreement eight
11 hours each side. So tomorrow we have a half an hour each
12 for opening argument, right?

13 MR. TAMBE: That's right.

14 THE COURT: And then I'm just going to leave it to
15 you to figure out how long -- how many witnesses get put on
16 and to monitor the timing. I'm not going to be keeping the
17 chess clock, right?

18 MR. TAMBE: You're not. We'll have someone do
19 that. I think it'll be good practice for us at the end of
20 each day just to talk to each other and make sure we don't
21 have a disagreement of something as fundamental as that.

22 THE COURT: Right.

23 MR. TAMBE: We shouldn't. We'll manage it.

24 THE COURT: I mean it -- but then to that point
25 though just to be clear, I'm starting you at 9:00 tomorrow,

1 but I hadn't intended to start at 9:00 on the other two
2 days.

3 MR. LAWRENCE: Correct.

4 MR. TAMBE: Yeah, I think --

5 THE COURT: Is that --

6 MR. TAMBE: Yeah, one of the issues is we might
7 ask for your indulgence on that point, because I think you
8 had said to us that it may be possible for you to start at
9 9:00, it's hard for you to go past 5:30.

10 THE COURT: Right.

11 MR. TAMBE: And if we're having -- if we're
12 stopping tomorrow at 3:20 we think certainly for the next
13 day, for Wednesday, we would like to start at 9:00. It may
14 be we make enough progress on Wednesday --

15 THE COURT: So why don't we -- why don't we
16 remember to discuss it at the end of the day tomorrow.

17 MR. TAMBE: That'll be perfect.

18 THE COURT: If I do have to start two of the three
19 days early I'd prefer it be the Wednesday rather than the
20 Thursday, and you know, 5:30 is a good place to stop. If we
21 need another 10, 15 minutes to finish up a witness I'll be
22 able to finesse that.

23 MR. TAMBE: Thank you.

24 THE COURT: Okay. And you have breakout rooms
25 here? We've given you rooms.

1 MR. TAMBE: We do, Your Honor.

2 THE COURT: And you know the drill, you'll allowed
3 to bring in food, and during a trial I relax the no drinks
4 rule. You can have coffee just as long as you don't spill
5 and it clean up after yourselves. And you laugh, but people
6 actually don't clean up after themselves. So okay. So
7 those are all the preliminaries.

8 Why don't I -- why don't we start with the
9 30(b)(6) issue and then go into the motions in limine, which
10 largely I'm prepared to tell you what my rulings are, but as
11 to a few I have -- I have some questions.

12 So I spent a great deal time with your submissions
13 on the 30(b)(6) issue. Always great to learn about an issue
14 that you didn't know existed and to learn everything there
15 is to learn about it.

16 And what I'm going to do both of the 30(b)(6)
17 issue and all of the motions is I'm going to give you a
18 ruling with as much color around it as I can, but everything
19 will be incorporated into the decision on the merits so that
20 your points for appeal are preserved, so that if any of you
21 thinks on any of the points I've gotten this wrong you'll
22 have my reasoning in the opinion. That's the way I --
23 that's just the way I do it, so. I don't have time to write
24 perfect separate opinions on eight preliminary matters on
25 the eve of trial.

1 So on the 30(b)(6) witness issue based on a lot of
2 time that I've spent with the cases, with the rule,
3 secondary sources, et cetera, I think the right answer is as
4 far as I'm concerned is that absolutely the gentleman can
5 testify at trial, but only as to matters within his personal
6 knowledge.

7 You can submit the transcript of the 30(b)(6)
8 deposition that you took, and I believe that the exceptions
9 to -- I mean the -- let's just step back a moment and
10 pretend we're in law school, right?

11 I mean a 30(b)(6) witness is supposed to be the
12 corporate representative who's supposed to get smart and
13 educated on a bunch of topics. Then you go and take that
14 deposition, right?

15 The 30(b)(6) concept as far as I'm concerned and
16 based on what I've read, really doesn't have a place at
17 trial, and if you have a 30(b) -- a so-called 30(b)(6)
18 witness at trial that would override or have the effect of
19 overriding the rules that preclude testimony based on other
20 than personal knowledge, and in my mind would introduce
21 potentially hearsay evidence that really shouldn't come in.

22 It comes in as admissions in the 30(b)(6)
23 deposition and you get that, and I don't think, Mr. Tambe or
24 Ms. Sawyer, that you're objecting to the designation of the
25 transcript, nor are you objecting to the testimony, as long

1 as the topics are within the witness's personal knowledge.

2 MR. TAMBE: We're not objecting to that use of a
3 30(b)(6) transcript, but the only exception that we have
4 proper objections that were made --

5 THE COURT: Sure.

6 MR. TAMBE: -- and preserved at the deposition.

7 THE COURT: Right. Okay? So that's my -- that's
8 my disposition of the 30(b)(6). Is that -- I want it to be
9 clear so that there's no ambiguity. Okay?

10 MR. TAMBE: Sure.

11 THE COURT: Okay. All right. So that's that one.

12 Then we have the two -- the five motions in limine
13 that were filed by Washington TSA and we have the motion of
14 Lehman to exclude the testimony of Mr. Kuri (ph) and
15 Mr. Hasteroc (ph).

16 MR. LAWRENCE: Your Honor?

17 THE COURT: Yes.

18 MR. LAWRENCE: As I understood your prior ruling
19 at the prior hearing we had you were going to reserve ruling
20 on the current Hasteroc motion 'til after you heard their
21 testimony. That -- is that being -- is that different?

22 THE COURT: Well, I think -- yeah, I'm going to
23 hear their testimony.

24 MR. LAWRENCE: Oh, okay.

25 THE COURT: But I think reserving ruling in the

1 sense of that I think under any circumstances I could decide
2 after I hear someone's testimony there's a motion --

3 MR. LAWRENCE: Sure.

4 THE COURT: -- to exclude it, there's a motion to
5 -- similar motions have been made with respect to the expert
6 testimony that Lehman is offering.

7 MR. LAWRENCE: There is a difference in the scope
8 of the motion.

9 THE COURT: Okay.

10 MR. LAWRENCE: And part of the reason I'm raising
11 the issue --

12 THE COURT: Okay.

13 MR. LAWRENCE: -- and Ms. Evanson will argue the
14 motion in limine, is that we did not understand we were
15 going to be arguing --

16 THE COURT: You're not.

17 MR. LAWRENCE: -- the motion to exclude. All
18 right.

19 So you had raised that, so I wasn't sure if you
20 were going to get argument about that.

21 THE COURT: Okay.

22 MR. LAWRENCE: But the difference is excluding
23 part of -- excluding a particular opinion rather than the
24 entire --

25 THE COURT: Understood. Okay. I mean I didn't

1 agree to a hearing on the motions separate and apart from
2 the time I had reserved for you for trial.

3 MR. LAWRENCE: Right.

4 THE COURT: So, you know, in the curfuffle
5 surrounding the 30(b)(6) it was mentioned somewhere that oh,
6 we're -- you know, we can deal with that when we have that
7 hearing on the motions in limine. I didn't agree to a
8 hearing on the motions in limine.

9 If you want to be heard beyond the papers, which I
10 think the papers lay out the issues fine and I'm prepared to
11 rule on them, you know, I just thought going into the trial
12 you wanted to know where you stood.

13 Hasteroc and Kuri are testifying. Okay? All of
14 the -- let me take the motions one at a time.

15 Okay. So motions one and two have to do with --
16 two have to do with Gruer and one has to do with Babble
17 (ph), so those motions are denied.

18 The testimony is coming in and, you know, you can
19 argue after I hear the testimony that I should completely
20 disregard it or that I should afford it no weight. Okay?
21 So that's one and two.

22 Three we need to talk about. So, I do recall the
23 discovery disputes related to the issue of whether or not
24 other states' RFA's calculations were relevant, and there
25 was an email by folks from Schwab Financial, my recollection

1 is, transmitting a New Jersey proof of claim and we had a
2 lot of argument back and forth about the relevance.

3 They're seeking to introduce it not for a
4 valuation of the termination amount but on the narrower
5 issue of the availability of quotes. Because that's what --
6 that's what they're papers say.

7 MR. LAWRENCE: You're talking about -- I'm sorry,
8 I should --

9 THE COURT: Yes, go ahead. Either one of you.

10 MR. LAWRENCE: No, I just want to make sure I
11 understand. You're talking about now the --

12 THE COURT: The proofs of claim.

13 MR. LAWRENCE: -- generally the other -- the other
14 claims or just the -- they're talking about more than just
15 the New Jersey claim.

16 THE COURT: Your motion says you want to exclude
17 evidence or argument pertaining of proofs of claim filed by
18 other states.

19 MR. LAWRENCE: Right.

20 THE COURT: Right.

21 MR. LAWRENCE: I just want to make clear that it's
22 well beyond New Jersey.

23 THE COURT: The response that I got from Jones Day
24 says we're not -- in response to your argument that it's not
25 fair now to allow that to come in because we were precluded

1 from getting it during discovery on the grounds that it
2 wasn't relevant.

3 Their response is it's not coming in on valuation,
4 it's coming in to test the assertion or push back on the
5 assertion that there were no quotes available, you couldn't
6 get a quote, which is a position that Washington TSA has
7 taken.

8 So now I say, okay, and further Jones Day says, a
9 proof of claim is a publicly filed document. That's true,
10 but you still have hearsay issues embedded in the proofs of
11 claims. Simply because somebody writes -- and I haven't
12 looked at them yet -- simply because somebody writes in
13 their loss calculation memo here are the three bids, in my
14 mind you would be offering that for the truth that those
15 three bids existed. I have no way of knowing that.

16 MR. TAMBE: I think there's a couple of aspects to
17 it.

18 THE COURT: Okay.

19 MR. TAMBE: One is I don't believe we will be
20 asking to admit into evidence --

21 THE COURT: Okay.

22 MR. TAMBE: -- the three proofs of claim.

23 THE COURT: Okay.

24 MR. TAMBE: The fact that they exist that in the
25 -- the public record, the public docket --

1 THE COURT: Right.

2 MR. TAMBE: -- has statements filed under penalty
3 of perjury like every other filing that someone purports to
4 have done the following would be used to impeach
5 Mr. Shapiro.

6 Mr. Shapiro claims to have run a process which is
7 completely undocumented. We have evidence and we will
8 present evidence from other sources saying there were at
9 least indicative quotes available, in fact Kuri and Hasteroc
10 admit they were.

11 THE COURT: But what you're -- but let's say --
12 let's say there's a proof of claim from Alaska that nobody
13 has -- that you're offering no first-hand knowledge of. For
14 all we know, with not casting aspersions at Alaska, someone
15 might have made up the three quotes.

16 So it's indicative of nothing other than somebody,
17 as you said, filed a proof of claim on a public docket under
18 penalty of perjury.

19 So you can -- I think you can ask him about it,
20 but I don't think -- it doesn't come in for the truth of the
21 existence of the quotes reflected in the proof of claim.

22 MR. TAMBE: I'll agree with that.

23 THE COURT: Okay.

24 MR. TAMBE: We wouldn't offer it for that purpose.

25 THE COURT: Now to the extent that you're going to

1 show Mr. Shapiro -- I forget New York or New Jersey -- which
2 he may or may not have personal knowledge of then we might
3 have a different situation. But part of the problem that
4 I'm having is that I feel like I'm -- everyone has got a
5 different style of trying a case. Your style obviously is a
6 lot of motions in limine, and that's fine, I just don't -- I
7 never -- you know, we don't know if it's actually going come
8 to that because we don't know how the testimony is going to
9 unfold.

10 So, Mr. Tambe, is agreeing, because I'm ruling,
11 that the -- the indicative quotes in the proofs of claim are
12 not going to come in for the truth of the matter asserted,
13 i.e., that those indicative quotes actually existed, except
14 to the extent that through the mouth of some witness and the
15 witness lists are in we can get around the hearsay problem.
16 Okay?

17 MR. LAWRENCE: Yeah.

18 THE COURT: Okay. Okay in the sense that you hear
19 me, not in that you necessarily agree with me.

20 MR. LAWRENCE: Probably okay in both sense.

21 THE COURT: Okay. Okay in the sense that at least
22 I thought carefully about what you both were saying.

23 Okay. Let's talk about motion in limine number 4,
24 which is evidence or argument pertaining to settlement
25 and/or crystallization.

1 So in my mind, again not having heard or seen your
2 evidence, those are two very different things.

3 Settlement as between you -- as between Washington
4 TSA and Lehman totally precluded under FRE 408 and we've
5 gone through that with respect to the mediation and other
6 things.

7 Washington TSA's communications with other third
8 parties about potentially selling its claim, this, that, or
9 the other thing in connection with an amount of the claim,
10 that's not settlement discussions, that's a non-protected --
11 in the absence of some other reason that that shouldn't be
12 disclosed that comes in in my view. But I'm happy to hear
13 you on this one.

14 MS. EVANSON: Your Honor, there are several
15 proposed exhibits that have to do with internal discussions,
16 minutes of board meetings or internal emails within
17 Washington TSA that have to do with identifying a potential
18 -- a potential number as far as a crystallization number
19 would go, and that's not necessarily vis-à-vis a third
20 party, that's a number they're trying to reach with Lehman
21 in order to move forward with the crystallization process.

22 THE COURT: Well when we get to that point then
23 I'm going to have to look at the exhibit and make a
24 determination as to whether or not I believe that to be the
25 case, because if it's an internal communication that's

1 unrelated to settlement with Lehman and that's solely
2 related to monetizing the claim I think the latter comes in,
3 I think the former doesn't --

4 MS. EVANSON: Sure.

5 THE COURT: -- doesn't come in.

6 MS. EVANSON: Sure. Okay.

7 THE COURT: So that's -- you know, that's another
8 one we'll have to see when we get there.

9 MS. EVANSON: Fair enough. Thank you.

10 THE COURT: All right?

11 Ms. Sawyer, you're knitting your brow.

12 MS. SAWYER: I just wanted to make sure I
13 understood the ruling.

14 THE COURT: The -- well what's being said is that
15 there are going -- there may be internal communications that
16 reflect discussions of coming to a number, and the argument
17 is being made that that process was undertaken for the
18 purpose of settlement discussions with Lehman and therefore
19 should be excluded.

20 Based on the description that may be the case or I
21 might conclude that in fact it's not the case, that it's got
22 nothing to do with settling with Lehman, but it's got to do
23 with TSA's internal process for coming to a number for the
24 purpose of monetizing the claim, which isn't settlement
25 protected, and hopefully the document will be clearer than

1 I'm being right now.

2 MS. SAWYER: Thank you.

3 THE COURT: But I mean we all agree settlement off
4 limits.

5 Okay. So then that gets us to the fifth one,
6 which is evidence regarding the 2013 refunding of the 2002
7 bonds, and I think this one is difficult as well because the
8 parties seem to agree that the calculation needs to take
9 place as of the termination date, right?

10 So that what Lehman is saying is if everybody
11 agrees with that then anything that happened subsequent to
12 that if it's off limits for us, Lehman, it should be off
13 limits for you, TSA.

14 I can't tell exactly what you're going to say, but
15 I think there is some merit to the argument that if we're
16 opening the door to Monday morning quarterbacking, in other
17 words, looking at what happened a couple of years down the
18 road to shed light on the reasonableness or not or the
19 quality of what was done in the past, then we're opening the
20 door to that. But I just can't tell enough to know whether
21 or not the refunding of the bonds is going to come into
22 play. I don't even -- I would guess that they don't even
23 know because they don't know what you're going say.

24 So, I think on that one I have to tell you I'm
25 going to wait and see, but to me it seems right that it's

1 either -- if it's off limits it's off limits and they can't
2 bring it up, but to the extent that you go there and we're
3 introducing the future as a way of evaluating what happened
4 in the past it may well be that the refunding of the bonds
5 is relevant to that.

6 In other words if we're into actual loss land a
7 opposed to a calculation, if that makes sense.

8 So on that one I think I'm going to wait and see
9 as we get closer toward it, and I'll assume that somebody is
10 going to pop up and say we've arrived at the bond refunding
11 point and then I'll be able to see where we are on that to
12 know what the right answer is. Okay?

13 MR. TAMBE: Okay.

14 MS. SAWYER: Okay. Thank you, Your Honor.

15 THE COURT: So I think that that's it. No? Did I
16 miss one?

17 MR. TAMBE: It is it. It is it. There's just a
18 point of clarification.

19 THE COURT: Okay.

20 MR. TAMBE: I heard you loud and clear on Kuri and
21 Hasteroc --

22 THE COURT: Right.

23 MR. TAMBE: -- and I don't want to test the
24 Court's patience.

25 THE COURT: No.

1 MR. TAMBE: I assume at some point Mr. Hasteroc is
2 going to take the stand and he's going to be -- his
3 qualifications are going to be read in.

4 We could just preserve our objection as part of my
5 cross, I could deal with it, or I could do a voir dire. But
6 the only reason to do the voir dire would be to actually cut
7 off his testimony at that point.

8 THE COURT: Yeah, I don't want to cut off his
9 testimony. I mean --

10 MR. TAMBE: That answers the question.

11 THE COURT: Yeah. I mean so for the sake of
12 saving everybody's time --

13 MR. TAMBE: Yeah.

14 THE COURT: -- I think that from the documents
15 that have been submitted, you know, the argument is being
16 made that this is an ipse dixit type expert opinion and
17 presumably these folks are going to demonstrate why it
18 should be called something less pejorative than an ipse
19 dixit, even though it seems to be agreed that it was created
20 for this unique circumstance, and I'm going to hear what
21 they have to say and then I'll hear from you as to why I
22 should thoroughly disregard it.

23 MR. TAMBE: That's right, Your Honor.

24 THE COURT: Okay?

25 MR. TAMBE: Thank you.

1 THE COURT: Is that --

2 MR. LAWRENCE: Yes.

3 THE COURT: -- okay?

4 MR. LAWRENCE: I think there's one other issue.

5 THE COURT: Okay.

6 MR. LAWRENCE: Lehman has asked -- they like to
7 pick on Mr. Shapiro -- they've asked that Mr. Shapiro be
8 sequestered from testimony at trial. We are agreeable to
9 having him sequestered with respect to the TSA fact
10 witnesses who are testifying, but we believe it's
11 appropriate as an expert that he be able to sit in on the
12 testimony of Kuri and Hasteroc.

13 Our order we've given them is that we have all the
14 fact witnesses followed by Mr. Hasteroc, Mr. Kuri, and
15 Mr. Shapiro, and then they have their experts in their case.

16 THE COURT: And you have a problem with that?

17 MR. TAMBE: I do, Your Honor.

18 THE COURT: Okay.

19 MR. TAMBE: Part of --

20 THE COURT: Because I would have -- I'm sorry, you
21 go first.

22 MR. TAMBE: Okay. Part of the theme that we have
23 shared with the Court is --

24 THE COURT: Right.

25 MR. TAMBE: -- they have some inconsistencies --

1 THE COURT: Right.

2 MR. TAMBE: -- to put it mildly between the two
3 experts.

4 THE COURT: Yes.

5 MR. TAMBE: They have Hasteroc followed by Kuri,
6 if I can just lay out for you what my concern is.

7 THE COURT: Okay.

8 MR. TAMBE: I might challenge Hasteroc on a few
9 things. Mr. Shapiro, hearing that, one is forewarned in
10 terms of where Mr. Hasteroc has left him, but he may also
11 try and improve the lie as it were fore -- a golf term, not
12 a --

13 THE COURT: Golf term, not a --

14 MR. TAMBE: A golf term.

15 THE COURT: -- not a perjury term, right.

16 MR. TAMBE: -- for Mr. Kuri. I have concerns
17 about that. Because --

18 THE COURT: So wait, do you have concerns about
19 Kuri being in the courtroom while Hasteroc is testifying?

20 MR. TAMBE: I don't. I don't.

21 THE COURT: No.

22 MR. TAMBE: It's Mr. Shapiro.

23 THE COURT: Right.

24 MR. TAMBE: I mean we can be quite open about
25 this, it's Mr. Shapiro.

1 THE COURT: Okay. So Shapiro -- Hasteroc and Kuri
2 are going to testify. They're the unique approach guys.

3 MR. TAMBE: Yes.

4 THE COURT: Okay.

5 MR. TAMBE: Followed by Mr. Shapiro.

6 THE COURT: Followed by Mr. Shapiro. But then I
7 would think that one of the things that you're going to want
8 to do is to ask Mr. Shapiro all the things that you believe
9 are wrong with what Hasteroc and Kuri did. No? Or is it --
10 because of the different methodologies you're not mixing it
11 up?

12 MR. TAMBE: It's really different methodologies,
13 and to the extent I want to ask Mr. Shapiro that I can ask
14 him off of the --

15 THE COURT: Okay. So then --

16 MR. TAMBE: -- documents that were provided.

17 THE COURT: -- then Hasteroc and Kuri come and go.

18 MR. TAMBE: Yeah.

19 THE COURT: And what prejudice is that there to
20 you that Shapiro has listened to it?

21 MR. TAMBE: He shapes his testimony. He shapes
22 his testimony to try and avoid the conflict, to try and
23 explain away the conflict.

24 THE COURT: But the normal rule is that experts
25 get to hear each other testify. So you have the same issue.

1 You know the fact that Shapiro kind of was shifted kind of
2 from a fact witness to -- I thought you were going somewhere
3 else. I mean the normal rule is that experts can listen to
4 each other testify, and you will then have the ability to
5 impeach Mr. Shapiro based on his prior deposition where he
6 didn't have that opportunity, no?

7 I'm just trying to follow --

8 MR. LAWRENCE: Well they have three depositions.

9 MR. TAMBE: A few depositions. He's been deposed
10 three times, so we'll --

11 THE COURT: Okay.

12 MR. TAMBE: Yeah. So we'll --

13 THE COURT: Right. So if he -- so if he hears
14 something and he thinks uh oh, that's, you know, it's not
15 adding up, the judge isn't buying it I'm going to shift a
16 little bit then you're going to -- you're going to impeach
17 him with prior testimony in which he was not so informed,
18 right?

19 MR. TAMBE: I will do that. I'll tell you what
20 the other concern is.

21 THE COURT: Okay.

22 MR. TAMBE: In the last four to six weeks we've
23 seen a couple of new theories that appeared nowhere in any
24 of the prior filings. For example, there's a mistake in the
25 RFA.

1 First off let me -- so it may well be the case
2 that Mr. Kuri and Mr. Hasteroc take the stand having read
3 the Daubert motion, for example --

4 THE COURT: The mistake in the RFA being as if it
5 was Lehman?

6 MR. TAMBE: Yeah. That's in the argument, right.
7 That's an argument that -- at least to me it was. So that's
8 what raises my concern. What raises my concern is that
9 there's a shifting of theories and therefore the depositions
10 we've taken before may be useful to us to impeach, but they
11 may not.

12 THE COURT: Okay. But --

13 MR. TAMBE: And the one witness that that raises
14 greater concern for me than anyone else is Mr. Shapiro.
15 That's as nicely as I can say it.

16 THE COURT: Okay. Go ahead, Mr. Lawrence.

17 MR. LAWRENCE: I don't know where to begin. But
18 normal ruling is as Your Honor said experts. This new
19 theory that's a bunch of hockie (sic). We've made that
20 argument that on the --

21 THE COURT: The --

22 MR. LAWRENCE: -- negotiation of the RFA since day
23 one, it doesn't -- that argument is irrelevant to
24 Mr. Shapiro's deposition, to Mr. Kuri's deposition, to
25 Mr. Hasteroc's deposition, Mr. Gruer's deposition. None of

1 them are arguing that as if it were Lehman it doesn't matter
2 because it was a mistake, they argue as if it -- where
3 Lehman doesn't matter because it doesn't matter in the
4 termination calculation under the definition of the RFA,
5 which their experts admit they did not use the as if it were
6 Lehman language. So this is totally made up argument.

7 THE COURT: But if we're going to -- so to the
8 extent that Shapiro is going to be present for Hasteroc and
9 Kuri's testimony the normal rules are going to apply --

10 MR. LAWRENCE: Right.

11 THE COURT: -- that he can't talk to anybody,
12 Shapiro. He can't talk to you, he can't talk to Hasteroc or
13 Kuri.

14 MR. LAWRENCE: Then I want that rule applied to
15 their experts, that Mr. Gruer and Mr. Babble can't talk to
16 them either. Because they're going bring Gruer and Babble
17 into the courtroom to listen to the expert testimony. Why
18 should Mr. Shapiro who is an expert be treated differently
19 than Mr. Gruer or Mr. Babble? I don't follow the rationale,
20 because I knew that they'd want to bring in Gruer. If
21 they're going to keep out Gruer and Babble that's a
22 different story.

23 MR. TAMBE: Let me be clear. Mr. Gruer and
24 Mr. Babble won't listen -- won't be in the courtroom when
25 Mr. Kuri, Mr. Hasteroc, or Mr. Shapiro testify. They're not

1 going to be here. But I am at the end of the trial date
2 going talk to the experts about what came in and didn't come
3 in.

4 THE COURT: Right. No, you can talk to --

5 MR. TAMBE: I'm allowed to do that.

6 THE COURT: Of course you're going to talk to your
7 experts, I'm just talking about Hasteroc and Kuri testify --

8 MR. LAWRENCE: And they can't talk to Shapiro.

9 THE COURT: -- and they can't talk to Shapiro.

10 MR. LAWRENCE: Oh, absolutely. I'm sorry.

11 THE COURT: Yeah. No, that's --

12 MR. LAWRENCE: Then that's --

13 THE COURT: -- that's all I meant.

14 MR. LAWRENCE: Of course.

15 THE COURT: I mean he's going to sit here and he's
16 going to listen --

17 MR. LAWRENCE: Yeah.

18 THE COURT: -- but then you don't get to prep
19 Mr. Shapiro on how to handle inconsistencies.

20 MR. LAWRENCE: Right. I mean there are no
21 inconsistencies.

22 THE COURT: Okay. I'm being --

23 MR. LAWRENCE: Right.

24 THE COURT: -- hypothetical.

25 MR. LAWRENCE: Yes.

1 THE COURT: I'm being hypothetical.

2 MR. LAWRENCE: Yes.

3 THE COURT: Right?

4 MR. LAWRENCE: Right.

5 THE COURT: You don't get to -- whether we end at
6 5:00 or whether it's the middle of the day -- I mean just to
7 be clear --

8 MR. LAWRENCE: Sure.

9 THE COURT: -- you don't get to sit down with
10 Mr. Shapiro and say that Hasteroc and Kuri messed up you
11 have to do this, that, or the other thing, right?

12 MR. LAWRENCE: No, that's correct, but again, just
13 to be clear, obviously they had asked a number of questions
14 about the inconsistency of Mr. Shapiro's at deposition and
15 he's talked about them.

16 THE COURT: Sure.

17 MR. LAWRENCE: Obviously we can prepare him with
18 respect to stuff they've asked about of him.

19 THE COURT: Oh, yeah, right, that hasn't --

20 MR. LAWRENCE: Absolutely.

21 THE COURT: -- that hasn't happened yet.

22 MR. LAWRENCE: Correct.

23 THE COURT: I'm just trying to seize on the risk
24 of prejudice that they've --

25 MR. LAWRENCE: Sure.

1 THE COURT: -- identified that the testimony gets
2 molded.

3 Now he's a smart gentleman and presumably he's
4 going to hear it, he's going to pick up on it or he's not
5 going to pick up on it, then you're going to put him on
6 and --

7 MR. LAWRENCE: That's fine.

8 THE COURT: -- the chips will fall where they may,
9 but without the --

10 MR. LAWRENCE: Yes.

11 THE COURT: Yes. I won't say any --

12 MR. LAWRENCE: And I won't do that any way, but
13 that's neither here nor there.

14 THE COURT: I understand. All right?

15 MR. TAMBE: That's fine, Your Honor.

16 THE COURT: Okay.

17 MR. LAWRENCE: I think we're done.

18 THE COURT: Anything else housekeeping or
19 otherwise?

20 MS. SAWYER: I had a couple of housekeeping
21 things.

22 THE COURT: Okay, sure.

23 MS. SAWYER: And they're hopefully much less
24 contention than what we've --

25 THE COURT: So -- okay. So speaking of

1 housekeeping I usually like to have -- what are you going to
2 be doing with the tech and with the screen and with the
3 whole -- you know, am I going to have -- I have your volume,
4 it's very thin, well done, and I have your volumes, but them
5 I'm looking at all those boxes and I get very nervous.

6 MR. TAMBE: Contingency planning, Your Honor.

7 (Laughter)

8 MR. TAMBE: Here's what we have. What we envision
9 with each witness is we'll have a witness notebook --

10 THE COURT: Perfect.

11 MR. TAMBE: -- which will have the exhibits both
12 on cross for the cross witnesses --

13 THE COURT: Perfect.

14 MR. TAMBE: -- and for references that we want to
15 use you'll get two copies of those.

16 THE COURT: That's absolutely -- that is -- that's
17 perfect. Then I can leave --

18 MR. TAMBE: So that's what a lot of that is.

19 THE COURT: Okay. Then I have leave my master set
20 in chambers, but the witness notebooks are the key to making
21 me extremely happy during the trial because I rely on them
22 to a tremendous extent. So that's -- that's great.

23 MR. TAMBE: And then in terms of technology we'll
24 have some demonstratives from time to time, for the opening
25 tomorrow I'll have some slides that I'll put up there.

1 THE COURT: Okay. That's you're going to put up
2 on this?

3 MR. TAMBE: Well they'll go up on the -- I think
4 it's all one screen. It shows up there as well as there.

5 THE COURT: It's going to show up on my screen,
6 your screens --

7 MR. TAMBE: Yeah, I know you're not a big fan of
8 the big screen. I --

9 THE COURT: I'll do whatever works for you guys
10 I'm happy to do. That's by rule.

11 Now are we having a real-time court reporter?

12 MR. TAMBE: I believe we are, yes.

13 THE COURT: Okay. Okay.

14 MR. TAMBE: I think that's it on technology.

15 THE COURT: I think that's it.

16 MR. TAMBE: At least from our perspective.

17 THE COURT: Anything else?

18 MS. SAWYER: So I had just a couple things.

19 THE COURT: Yeah, go ahead.

20 MS. SAWYER: So there's some exhibits that we've
21 agreed in advance that can be admitted into evidence, and
22 I'm just curious like what time do you want us to try to
23 move those in? Should we --

24 THE COURT: I'd like to do it all at the end.

25 MS. SAWYER: At the end.

1 THE COURT: Yeah.

2 MS. SAWYER: So during the examinations then we
3 can just use them and --

4 THE COURT: You can just use them as long as you
5 -- we all have an understanding that you're responsible at
6 the end for telling me what documents come into evidence.

7 This doesn't sound like a situation in which
8 sometimes the parties bring in 10,000 potential trial
9 exhibits and they end up using 300 of them, but then they
10 want to admit into evidence all 10,000, which creates all
11 kinds of issues on appeal and otherwise.

12 It sounds as if you're on the same page in terms
13 of you're going to be affirmatively bringing to my attention
14 those documents that you want admitted into evidence. Yes?

15 MR. LAWRENCE: Yes, that's accurate, but I just
16 want to -- I just want to understand in terms of our
17 examination of witnesses to the extent there are objections
18 to documents --

19 THE COURT: Sure.

20 MR. LAWRENCE: -- do those need to be addressed
21 with the witness or are you going to reserve those for the
22 end of the case?

23 THE COURT: I think you -- no, I think you -- make
24 the objection and then I'm going dispose of it before you
25 keep going --

1 MR. LAWRENCE: Okay. I -- that's --

2 THE COURT: -- with the document.

3 I simply meant that we don't need to have the
4 hiccup of after the use of every document I move into
5 evidence, you know, plaintiff's 13 or whatever you're naming
6 -- you're numbering convention is. That's all I meant.

7 MR. LAWRENCE: Great. Thank you.

8 THE COURT: But --

9 MS. SAWYER: If there's an objection being
10 discussed should we -- can we ask for a ruling at that time
11 or not?

12 THE COURT: Yeah.

13 MS. SAWYER: Okay. All right.

14 THE COURT: Yeah.

15 MS. SAWYER: I just --

16 THE COURT: Yeah.

17 MS. SAWYER: Okay.

18 THE COURT: I mean I'm here to try to do this in
19 the way that makes you, you know, the most at ease, the most
20 efficient, the most happy.

21 MS. SAWYER: Then there's also two exhibits that
22 we believe should be admitted into evidence based upon
23 deposition designations of a witness who's not going to be
24 now testifying at the trial but we intend to use during the
25 examinations. Is -- is it fine for me to just use those or

1 our request to just use those and we deal with the objection
2 after the fact or is there something we should deal with --

3 THE COURT: There's going to be an objection to
4 the use of --

5 MS. SAWYER: -- up in advance?

6 MR. LAWRENCE: I have no idea what exhibits you're
7 talking about.

8 THE COURT: I mean this is in the category of --

9 MS. SAWYER: It's Debtors' Exhibit 25 and 26.

10 THE COURT: This is in the category of bridges
11 that we cross when we get to them.

12 MS. SAWYER: Okay. I just am trying to streamline
13 the presentation.

14 MR. LAWRENCE: We'll look at -- we'll look at
15 those.

16 MS. SAWYER: Okay. All right.

17 THE COURT: Yeah.

18 MR. LAWRENCE: Go ahead.

19 MS. SAWYER: Okay. Then we also have a video that
20 Lehman may present if there's time of Mr. Bregara's (ph)
21 testimony and there's some objections that have been
22 launched to the deposition designations of that video. For
23 purposes of, you know, efficient playing --

24 THE COURT: So you wanted to show -- you want to
25 give me a thumb drive with the video or you actually want to

1 play it during the course of the trial?

2 MS. SAWYER: We actually -- to the extent there's
3 time we might play it during the course of the hearing.

4 THE COURT: Okay.

5 MS. SAWYER: And we've shared the video with them
6 and included --

7 THE COURT: Okay.

8 MS. SAWYER: -- designations from both sides, but
9 there's some evident their objections and some form
10 objections --

11 THE COURT: Okay.

12 MS. SAWYER: -- that we believe the form
13 objections have been waived, but there's a couple
14 evidentiary objections --

15 THE COURT: Okay.

16 MS. SAWYER: -- to portions of the video. And so
17 we thought it might be useful to resolve those --

18 THE COURT: Well it's portions of the video
19 meaning portions of the testimony.

20 MS. SAWYER: Yes.

21 THE COURT: Okay. So I guess what you'll have to
22 do is in advance of that you're going to have to give me the
23 portions of the transcript and some short indication of, you
24 know, what the objections are --

25 MR. LAWRENCE: Sure.

1 THE COURT: -- and I'll give you a disposition on
2 that.

3 MS. SAWYER: Okay.

4 MR. LAWRENCE: Thank you, Your Honor.

5 THE COURT: Okay? Okay. I mean, you know, if
6 it's --

7 MR. LAWRENCE: That makes sense.

8 THE COURT: Okay. I mean if at any time --

9 MS. SAWYER: We just wanted to figure out how to
10 deal with it.

11 THE COURT: Yeah. No, if at any time I'm doing
12 something that you think is not the way you'd prefer to do
13 it, other than the way I rule, you should -- you should just
14 let me know. Okay? I know this is a very tiring and time
15 consuming exercise.

16 So we'll start at 9:00, we'll keep an eye of the
17 witnesses so their comfort is not sacrificed for our time
18 keeping, and I'll find out what the very latest minute is
19 that I can leave tomorrow.

20 (Whereupon these proceedings were concluded at 4:10 PM)

21

22

23

24

25

I N D E X

RULINGS

	Page	Line
30(b)(6)	9	1
Motion in Limine No. 1	12	17
Motion in Limine No. 2	12	17
Motion in Limine No. 3	16	10
Motion in Limine No. 4	19	3
Motion in Limine No. 5	20	8

C E R T I F I C A T I O N

I, Dawn South, certify that the foregoing transcript is a
true and accurate record of the proceedings.

Dawn South

Digitally signed by Dawn South
DN: cn=Dawn South, o, ou,
email=digital1@veritext.com,
c=US
Date: 2014.11.12 16:41:03 -05'00'

Dawn South

AAERT Certified Electronic Transcriber CET**D-408

Veritext

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: November 12, 2014

0	5	agreement 4:13 6:10 agrees 19:11 ahead 13:9 26:16 32:19 35:18 alaska 15:12,14 allow 13:25 allowed 8:2 28:5 ambiguity 10:9 amendment 4:15 amount 13:4 17:9 amounts 4:14 answer 9:3 20:12 answers 21:10 anybody 27:11 apart 12:1 appeal 8:20 33:11 appearances 4:3 appeared 25:23 applied 27:14 apply 27:9 approach 24:2 appropriate 22:11 argue 11:13 12:19 27:2 arguing 11:15 27:1 argument 6:12 11:20 13:2,17,24 16:24 18:16 19:15 21:15 26:6,7,20,23 27:6 arrived 20:10 asked 22:6,7 29:13 29:18 asking 14:20 aspects 14:16 aspersions 15:14 asserted 16:12 assertion 14:4,5 assume 20:9 21:1 attention 33:13 attorneys 3:3,12 authority 4:10 availability 13:5 available 14:5 15:9 avenue 3:13	avoid 24:22
08-13555 1:3	5 38:10 5:00 29:6 5:30 7:9,20	b	
1	6	b 1:20 8:9,13,16 9:1 9:7,11,15,17,17,22 10:3,8 12:5 38:5 babble 12:16 27:15 27:16,19,21,24 back 9:9 13:2 14:4 bankruptcy 1:1,13 1:22 based 9:1,16,19 18:20 25:5 34:22 believe 9:8 14:19 17:24 22:10 24:8 32:12 34:22 36:12 beyond 12:9 13:22 bids 14:13,15 big 32:7,8 bit 25:16 board 17:16 bond 20:10 bonds 19:7,21 20:4 bowling 1:14 boxes 31:5 break 6:7,7 breakout 7:24 bregara's 35:20 bridges 35:10 bring 8:3 20:2 27:16,20 33:8 bringing 33:13 brothers 1:7 brow 18:11 bunch 9:13 26:19 buying 25:15	
1 38:5,6 10 7:21 38:8 10,000 33:8,10 10017-6702 3:5 11501 39:12 1191 3:13 12 38:6,7 39:14 13 34:5 15 7:21 16 38:8 17 38:6,7 19 38:9 19888 2:1	6 8:9,13,16 9:1,7,11 9:15,17,22 10:3,8 12:5 38:5	c	
2	8 38:10	c 1:21 3:1 4:1 39:1,1 calculation 14:13 19:8 20:7 27:4 calculations 12:24 called 9:17 21:18 carefully 16:22 case 1:3 16:5 17:25 18:20,21 22:15 26:1 33:22	
2 38:7 20 38:10 2002 19:6 2013 19:6 2014 1:17 39:14 2032 4:22 2042 4:20 2100 3:14 222 3:4 25 35:9 26 35:9 2nd 3:13	8 38:10		
3	9 38:5 98101-2945 3:15 9:00 6:4,25 7:1,9,13 37:16		
3 1:17 38:8,9 30 8:9,13,16 9:1,7 9:11,15,17,17,22 10:3,8 12:5 38:5 300 33:9 39:11 330 39:10 3:35 1:18	a		
4	aaert 39:7 ability 25:4 able 7:22 20:11 22:11 absence 17:11 absolutely 9:4 28:10 29:20 31:16 accurate 33:15 39:4 actual 20:6 adding 25:15 addressed 33:20 admissions 9:22 admit 14:20 15:10 27:5 33:10 admitted 32:21 33:14 34:22 advance 32:21 35:5 36:22 adversary 5:1,15,20 affirmatively 33:13 afford 12:20 afternoon 4:4,8 agree 12:1,7 15:22 16:19 19:3,8 agreeable 22:8 agreed 4:14 21:19 32:21 agreeing 16:10		

<p>cases 9:2 casting 15:14 category 35:8,10 certainly 7:12 certified 39:7 certify 39:3 cet 39:7 cetera 9:3 challenge 23:8 chambers 31:20 chapman 1:21 chess 6:17 chips 30:8 circumstance 21:20 circumstances 11:1 claim 4:14 5:9 13:1 13:12,15,17 14:9,22 15:12,17,21 16:11 17:8,9 18:2,24 claims 2:2,3,3 4:14 13:14 14:11 15:6 clarification 20:18 clarify 6:2 clean 8:5,6 clear 6:25 10:9 13:21 20:20 27:23 29:7,13 clearer 18:25 clock 6:17 closer 20:9 coffee 8:4 color 8:18 come 9:21 13:25 15:20 16:7,12 18:5 19:21 24:17 28:2 33:6 comes 9:22 17:12 18:2 comfort 37:17 coming 12:18 14:3 14:4 18:16,23 communication 17:25 communications 17:7 18:15 complaint 5:1,16</p>	<p>completely 12:19 15:7 concept 9:15 concern 23:6 25:20 26:8,8,14 concerned 9:4,15 concerns 23:16,18 conclude 5:20 18:21 concluded 37:20 concludes 5:12 conference 2:1 conflict 24:22,23 connection 17:9 consuming 37:15 contention 30:24 contingency 31:6 convention 34:6 copies 31:15 corporate 9:12 correct 4:21 5:2 7:3 29:12,22 country 39:10 couple 14:16 19:17 25:23 30:20 32:18 36:13 course 28:6,14 36:1 36:3 court 1:1,13 4:2,7 4:11,18,22,24 5:3,7 5:12,14,19,23,25 6:5,14,22,24 7:5,10 7:15,18,24 8:2 10:5 10:7,11,17,22,25 11:4,9,12,16,21,25 12:4 13:9,12,16,20 13:23 14:18,21,23 15:1,11,23,25 16:18 16:21 17:22 18:5,7 18:10,14 19:3 20:15 20:19,22,25 21:8,11 21:14,24 22:1,3,5 22:16,18,20,23,24 23:1,4,7,13,15,18 23:21,23 24:1,4,6 24:15,17,19,24 25:11,13,21 26:4,12 26:16,21 27:7,11</p>	<p>28:4,6,9,11,13,15 28:18,22,24 29:1,3 29:5,9,16,19,21,23 30:1,8,11,14,16,18 30:22,25 31:10,13 31:16,19 32:1,5,9 32:11,13,15,17,19 32:24 33:1,4,19,23 34:2,8,12,14,16,18 35:3,8,10,17,24 36:4,7,11,15,18,21 37:1,5,8,11 court's 20:24 courtroom 23:19 27:17,24 created 21:19 creates 33:10 cross 21:5 31:12,12 35:11 crystallization 16:25 17:18,21 curfuffle 12:4 curious 32:22 current 10:20 cut 21:6,8</p>	<p>demonstratives 31:24 denied 12:17 deposed 25:9 deposition 9:8,14 9:23 10:6 25:5 26:24,24,25,25 29:14 34:23 35:22 depositions 25:8,9 26:9 derivative 2:3 description 18:20 designation 9:24 designations 34:23 35:22 36:8 determination 17:24 difference 11:7,22 different 10:21 16:3 16:5 17:2 24:10,12 27:22 differently 27:18 difficult 19:7 dire 21:5,6 disagreement 6:21 disclosed 17:12 discovery 12:23 14:1 discuss 7:16 discussed 34:10 discussions 17:10 17:15 18:16,18 dismay 6:8 dispose 33:24 disposition 10:8 37:1 disputes 12:23 disregard 12:20 21:22 district 1:2 6:5 dixit 21:16,19 doc 2:1 docket 6:1 14:25 15:17 document 14:9 18:25 34:2,4</p>
--	---	--	--

documents 21:14 24:16 33:6,14,18 doing 31:2 37:11 door 19:16,20 drill 8:2 drinks 8:3 drive 35:25 driven 4:19	examination 33:17 examinations 33:2 34:25 example 25:24 26:3 exception 10:3 exceptions 9:8 exclude 10:14 11:4 11:17 13:16 excluded 18:19 excluding 11:22,23 exercise 37:15 exhibit 17:23 35:9 exhibits 17:15 31:11 32:20 33:9 34:21 35:6 exist 14:24 existed 8:14 14:15 16:13 existence 15:21 expert 11:5 21:16 22:11 27:17,18 experts 22:15 23:3 24:24 25:3 26:18 27:5,15 28:2,7 explain 24:23 extent 15:25 16:14 20:2 24:13 27:8 31:22 33:17 36:2 extremely 31:21 eye 37:16	filings 25:24 financial 12:25 find 37:18 fine 12:10 16:6 30:7 30:15 34:25 finesse 7:22 finish 7:21 first 2:3 4:12 15:13 22:21 26:1 five 10:12 flevaris 3:19 4:9 folks 6:6 12:25 21:17 follow 25:7 27:19 followed 22:14 23:5 24:5,6 following 15:4 food 8:3 fore 23:11 foregoing 39:3 forewarned 23:9 forget 16:1 form 36:9,12 former 18:3 forth 13:2 forward 17:21 four 25:22 fre 17:4 fundamental 6:21 further 14:8 future 20:3	17:23 18:15 19:14 19:21,23,25 20:8,10 21:2,2,3,17,20 24:2 24:7 25:2,15,16,16 27:7,8,9,16,21 28:1 28:2,6,15,16 30:4,4 30:5,5 31:1,3 32:1,5 33:13,21,24,25 34:23 35:3 36:22 golf 23:11,13,14 good 4:4,7,8 6:8,19 7:20 gotten 8:21 great 8:12,13 31:22 34:7 greater 26:14 green 1:14 grounds 14:1 group 3:11 gruer 12:16 27:15 27:16,19,20,21,23 gruer's 5:11,12 26:25 guess 19:22 36:21 guys 24:2 32:9
e	e 1:20,20 3:1,1 4:1,1 38:1 39:1 early 7:19 ease 34:19 east 3:4 educated 9:13 effect 9:18 efficient 34:20 35:23 eight 6:10 8:24 either 13:9 20:1 27:16 electronic 39:7 email 12:25 emails 17:16 embedded 14:10 enable 6:5 enter 6:1 entire 11:24 envision 31:8 error 4:19 esq 3:7,8,9,17,18,19 et 9:3 evaluating 20:3 evanson 3:17 4:8,9 11:13 17:14 18:4,6 18:9 eve 8:25 everybody 19:10 everybody's 21:12 evidence 9:21 13:17 14:20 15:7,8 16:24 17:2 19:6 32:21 33:6,10,14 34:5,22 evident 36:9 evidentiary 36:14 exactly 19:14	f	h
	f 1:20 39:1 fact 14:24 15:9 18:21 22:9,14 25:1 25:2 35:2 fair 13:25 18:9 fall 30:8 fan 32:7 far 9:4,15 17:18 feel 16:4 fifth 19:5 figure 6:15 37:9 file 5:1,15 filed 10:13 13:17 14:9 15:2,17 filing 15:3	g	half 6:11 hand 15:13 handle 28:19 happened 19:11,17 20:3 29:21 happy 17:12 31:21 32:10 34:20 hard 6:4 7:9 hasteroc 10:15,20 12:13 15:9 20:21 21:1 22:12,14 23:5 23:8,10,19 24:1,9 24:17 26:2 27:8,12 27:25 28:7 29:10 hasteroc's 26:25 hear 10:23 11:2 12:19 16:18 17:12 21:20,21 24:25 30:4 heard 10:20 12:9 17:1 20:20

hearing 2:1 10:19 12:1,7,8 23:9 36:3 hears 25:13 hearsay 9:21 14:10 16:15 hiccup 34:4 hockie 26:19 holdings 1:7 hon 1:21 honor 4:4,8,17,21 5:2,8,9,10,22 8:1 10:16 17:14 20:14 21:23 22:17 26:18 30:15 31:6 37:4 hopefully 18:25 30:23 hour 6:11 hours 6:11 housekeeping 30:18 30:20 31:1 hundred 2:2 hypothetical 28:24 29:1	introduce 9:20 13:3 introducing 20:3 ipse 21:16,18 irrelevant 26:23 issue 8:9,13,13,17 9:1 11:11 12:23 13:5 22:4 24:25 issues 7:6 12:10 14:10 33:11 it'll 6:19	kuri's 26:24 27:9 kymberly 3:17 4:9 l l 3:9 land 20:6 language 27:6 largely 6:6 8:10 latest 37:18 laugh 8:5 laughter 31:7 launched 35:22 lauri 3:8 4:5 law 3:11 9:10 lawrence 3:18 4:9 7:3 10:16,18,24 11:3,7,10,13,17,22 12:3 13:7,10,13,19 13:21 16:17,20 22:2 22:4,6 25:8 26:16 26:17,22 27:10,14 28:8,10,12,14,17,20 28:23,25 29:2,4,8 29:12,17,20,22,25 30:7,10,12,17 33:15 33:20 34:1,7 35:6 35:14,18 36:25 37:4 37:7 lay 12:10 23:6 lbhi's 4:15 lbsf 4:25 learn 8:13,14,15 leave 6:6,14 31:17 31:19 37:19 left 23:10 lehman 1:7 10:14 11:6 17:4,20 18:1 18:18,22 19:10,12 22:6 26:5 27:1,3,6 35:20 lehman's 4:15 lie 23:11 light 19:18 limine 8:9 10:12 11:14 12:7,8 16:6 16:23 38:6,7,8,9,10 limits 19:4,12,13 20:1,1	line 38:4 listen 25:3 27:17,24 28:16 listened 24:20 lists 16:15 little 25:16 long 6:7,15 8:4 9:25 33:4 look 17:23 35:14,14 looked 14:12 looking 19:17 31:5 loss 14:13 20:6 lot 4:2 9:1 13:2 16:6 31:18 loud 20:20 lunch 6:7,7
			m making 31:20 manage 6:23 master 31:19 matter 1:5 16:12 27:1,3,3 matters 8:24 9:5 mean 6:24 9:9,11 11:25 19:3 21:9,11 23:24 25:3 28:15,20 29:6 34:18 35:8 37:5,8 meaning 36:19 means 5:4,5 meant 28:13 34:3,6 mediation 17:5 medico 3:9 4:5 meetings 17:16 memo 14:13 mentioned 12:5 merit 19:15 merits 8:19 messed 29:10 methodologies 24:10,12 middle 29:6 mildly 23:2 mind 9:20 14:14 17:1 mineola 39:12
i i.e. 16:13 idea 35:6 identified 30:1 identifying 17:17 impeach 15:4 25:5 25:16 26:10 improve 23:11 included 36:6 including 4:15 inconsistencies 22:25 28:19,21 inconsistency 29:14 incorporated 8:19 indication 36:23 indicative 15:9,16 16:11,13 indulgence 7:7 informed 25:17 intend 34:24 intended 7:1 intention 5:21 internal 17:15,16 17:25 18:15,23	j j 3:18 jay 4:4 jayant 3:7 jennifer 3:9 4:5 jersey 13:1,15,22 16:1 jones 3:2 4:5 13:23 14:8 judge 1:22 25:15	k k 3:17 keep 27:21 33:25 37:16 keeping 6:16 37:18 key 31:20 kind 25:1,1 kinds 33:11 knew 27:20 knitting 18:11 know 6:9,10 7:20 8:2,14 12:4,6,11,12 12:18 15:14 16:7,7 16:8 18:7 19:20,23 19:23 20:12 21:15 25:1,14 26:17 31:3 32:7 34:5,19 35:23 36:24 37:5,14,14 knowing 14:15 knowledge 9:6,20 10:1 15:13 16:2 kuri 10:14 12:13 15:9 20:20 22:12,14 23:5,16,19 24:1,9 24:17 26:2 27:13,25 28:7 29:10	

[minute - protected]

Page 5

minute 37:18 minutes 7:21 17:16 mistake 25:24 26:4 27:2 mixing 24:10 molded 30:2 moment 9:9 monday 19:16 monitor 6:16 monotizing 18:2,24 morning 19:16 motion 2:1 10:13,20 11:2,4,8,14,17 13:16 16:23 26:3 38:6,7,8,9,10 motions 8:9,17 10:12 11:5 12:1,7,8 12:14,15,17 16:6 mouth 16:14 move 17:21 32:23 34:4	number 5:9 16:23 17:18,18,20 18:16 18:23 29:13 numbering 34:6 ny 3:5 39:12	opinions 8:24 opportunity 25:6 opposed 4:20 20:7 order 4:13 17:21 22:13 override 9:18 overriding 9:19	position 14:6 possible 7:8 potential 17:17,18 33:8 potentially 9:21 17:8 power 6:8 practice 6:19 preclude 9:19 precluded 13:25 17:4 prefer 7:19 37:12 prejudice 24:19 29:24 preliminaries 8:7 preliminary 8:24 prep 28:18 prepare 29:17 prepared 8:10 12:10 present 15:8 27:8 35:20 presentation 35:13 preserve 21:4 preserved 8:20 10:6 presumably 21:17 30:3 pretend 9:10 prior 10:18,19 25:5 25:17,24 probably 16:20 problem 16:3,15 22:16 proceedings 37:20 39:4 process 15:6 17:21 18:17,23 progress 7:14 proof 13:1 14:9 15:12,17,21 proofs 13:12,17 14:10,22 16:11 proper 10:4 proposed 17:15 protected 17:10 18:25
n	o	p	
n 3:1 4:1 38:1 39:1 naming 34:5 narrower 13:4 necessarily 16:19 17:19 need 7:21 12:22 33:20 34:3 needs 19:8 negotiation 26:22 neither 30:13 nervous 31:5 never 16:7 new 1:2,15,15 3:5 13:1,15,22 16:1,1 25:23 26:18 nicely 26:15 ninety 2:2 non 17:10 normal 24:24 25:3 26:18 27:9 notebook 31:9 notebooks 31:20 november 1:17 39:14	o 1:20 4:1 39:1 objecting 9:24,25 10:2 objection 2:2,3 4:15 21:4 33:24 34:9 35:1,3 objections 5:17 10:4 33:17 35:21 36:9,10,13,14,24 obviously 16:5 29:13,17 offer 15:24 offering 11:6 14:14 15:13 oh 10:24 12:5 25:14 28:10 29:19 okay 4:2,7,11,18 5:19,23,25 7:24 8:6 10:7,9,11,24 11:9 11:12,21,25 12:13 12:15,20 14:8,18,21 14:23 15:23 16:16 16:18,18,20,21,21 16:23 18:6 19:5 20:12,13,14,19 21:24 22:3,5,18,22 23:7 24:1,4,15 25:11,21 26:12,16 28:22 30:16,22,25 31:19 32:1,13,13 34:1,13,17 35:12,16 35:19 36:4,7,11,15 36:21 37:3,5,5,8,14 old 39:10 omnibus 2:2,3 open 23:24 opening 6:12 19:16 19:19 31:24 opinion 8:22 11:23 21:16	p 3:1,1 4:1 pacifica 3:11 page 33:12 38:4 papers 12:9,10 13:6 part 11:10,23 16:3 21:4 22:19,22 particular 11:23 parties 17:8 19:8 33:8 party 17:20 patience 20:24 paul 3:18 4:9 pejorative 21:18 penalty 15:2,18 people 8:5 perfect 7:17 8:24 31:10,13,17 perjury 15:3,18 23:15 personal 9:5,20 10:1 16:2 perspective 32:16 pertaining 13:17 16:24 ph 5:11 10:14,15 12:17 35:20 pick 22:7 30:4,5 place 7:20 9:16 19:9 plaintiff's 34:5 planning 31:6 play 19:22 36:1,3 playing 35:23 pm 1:18 37:20 point 6:24 7:7 17:22 20:11,18 21:1,7 points 8:20,21 pop 20:10 portions 36:16,18 36:19,23	

[provided - speaking]

Page 6

<p>provided 24:16 public 14:25,25 15:17 publicly 14:9 purports 15:3 purpose 15:24 18:18,24 purposes 35:23 push 14:4 put 6:15 23:2 30:5 31:25 32:1</p>	<p>record 14:25 39:4 reduction 4:14 references 31:14 reflect 18:16 reflected 15:21 refunding 19:6,21 20:4,10 regarding 4:13 19:6 related 12:23 18:2 relax 8:3 relevance 13:2 relevant 12:24 14:2 20:5 rely 31:21 remember 7:16 reporter 32:11 representative 9:12 request 35:1 reservation 4:25 reserve 10:19 33:21 reserved 5:17 12:2 reserving 10:25 resolve 36:17 respect 4:19 11:5 17:5 22:9 29:18 response 13:23,24 14:3 responsible 33:5 rfa 5:6 25:25 26:4 26:22 27:4 rfa's 12:24 right 4:11,16,17,22 5:7,10 6:12,13,17 6:22 7:10 9:3,10,14 10:7,11 11:18 12:3 13:19,20 15:1 18:10 19:1,9,25 20:12,22 21:23 22:24 23:1,15 23:23 25:13,18 26:6 27:10 28:4,20,23 29:3,4,11,19 30:14 34:13 35:16 rights 4:25 5:17 risk 29:23 road 19:18 39:10 rooms 7:24,25</p>	<p>rule 8:4 9:2 12:11 24:24 25:3 27:14 32:10 37:13 rules 9:19 27:9 ruling 8:18 10:18 10:19,25 16:10 18:13 26:18 34:10 rulings 8:10 38:3 run 6:9 15:6</p>	<p>settlement 4:10 16:24 17:3,10 18:1 18:18,24 19:3 settling 18:22 shapes 24:21,21 shapiro 15:5,6 16:1 22:7,7,15 23:9,22 23:25 24:1,5,6,8,13 24:20 25:1,5 26:14 27:8,12,18,25 28:8 28:9,19 29:10 shapiro's 26:24 29:14 shared 22:23 36:5 shed 19:18 shelley 1:21 shift 25:15 shifted 25:1 shifting 26:9 short 36:23 show 16:1 32:5 35:24 shows 32:4 sic 26:19 side 6:11 sides 36:8 similar 11:5 simply 14:11,12 34:3 sit 22:11 28:15 29:9 situation 16:3 33:7 six 25:22 slides 31:25 smart 9:12 30:3 solely 18:1 somebody 14:11,12 15:16 20:9 someone's 11:2 sorry 13:7 22:20 28:10 sound 33:7 sounds 33:12 sources 9:3 15:8 south 2:25 39:3,7 southern 1:2 speaking 30:25</p>
<p>q</p>		<p>s</p>	
<p>qualifications 21:3 quality 19:19 quarterbacking 19:16 question 4:18,25 21:10 questions 8:11 29:13 quite 23:24 quote 14:6 quotes 13:5 14:5 15:9,15,21 16:11,13</p>		<p>s 3:1 4:1 sacrificed 37:17 sake 21:11 saving 21:12 sawyer 4:5 9:24 18:11,12 19:2 20:14 30:20,23 32:18,20 32:25 33:2 34:9,13 34:15,17,21 35:5,9 35:12,16,19 36:2,5 36:8,12,16,20 37:3 37:9 saying 15:8 16:22 19:10 says 13:16,24 14:8 scc 1:3 school 9:10 schwab 12:25 scope 11:7 screen 31:2 32:4,5,8 screens 32:6 seattle 3:15 second 6:2 secondary 9:3 see 5:14 18:8 19:25 20:8,11 seek 5:20 seeking 13:3 seen 17:1 25:23 seize 29:23 selling 17:8 sense 11:1 16:18,20 16:21 20:7 37:7 separate 8:24 12:1 sequestered 22:8,9 set 31:19</p>	
<p>r</p>			
<p>r 1:20 3:1 4:1 39:1 ragged 6:10 raise 5:17 raised 11:19 raises 26:8,8,13 raising 11:10 rationale 27:19 reach 17:20 read 9:16 21:3 26:2 real 32:11 really 6:8 9:16,21 24:12 reason 11:10 17:11 21:6 reasonableness 19:18 reasoning 8:22 recall 12:22 received 4:13 recollection 12:25</p>			

<p>spending 6:3 spent 8:12 9:2 spill 8:4 stand 21:2 26:2 start 4:3,12 7:1,8,13 7:18 8:8 37:16 starting 6:3,25 state 4:10 statements 15:2 states 1:1 12:24 13:18 status 2:1 staying 6:8 step 9:9 stipulation 4:13 stood 12:12 stop 6:4 7:20 stopping 7:12 story 27:22 streamline 35:12 street 3:4 stuff 29:18 style 16:5,5 submissions 8:12 submit 9:7 submitted 21:15 subsequent 19:11 suite 3:14 39:11 supposed 9:11,12 sure 6:20 10:5,10 11:3,19 13:10 18:4 18:6,12 29:8,16,25 30:22 33:19 36:25 surrounding 12:5 swayer 3:8</p>	<p>tambe 3:7 4:4,5,17 4:21,23 5:2,5,8,15 5:21,24 6:13,18,23 7:4,6,11,17,23 8:1 9:23 10:2,6,10 14:16,19,22,24 15:2 15:22,24 16:10 20:13,17,20,23 21:1 21:10,13,23,25 22:17,19,22,25 23:2 23:5,8,14,16,20,22 23:24 24:3,5,12,16 24:18,21 25:9,12,19 25:22 26:6,13 27:23 28:5 30:15 31:6,8 31:11,14,18,23 32:3 32:7,12,14,16 tech 31:2 technology 31:23 32:14 tell 6:6 8:10 19:14 19:20,24 25:19 telling 33:6 term 23:11,13,14,15 termination 4:20 13:4 19:9 27:4 terms 23:10 31:23 33:12,16 test 14:4 20:23 testify 9:5 24:2,25 25:4 27:25 28:7 testifying 12:13 22:10 23:19 34:24 testimony 9:19,25 10:14,21,23 11:2,6 12:18,19 16:8 21:7 21:9 22:8,12 24:21 24:22 25:17 27:9,17 30:1 35:21 36:19 thank 7:23 18:9 19:2 20:14 21:25 34:7 37:4 theme 22:22 theories 25:23 26:9 theory 26:19 thin 31:4</p>	<p>thing 4:24 6:2 17:9 29:11 things 17:2,6 23:9 24:7,8 30:21 32:18 think 6:19 7:4,7,12 9:3,23 10:22,25 11:1 12:10 14:16 15:19,20 18:2,3 19:7,15,24 20:8,15 21:14 22:4 24:7 30:17 32:3,14,15 33:23,23 37:12 thinks 8:21 25:14 third 17:7,19 thoroughly 21:22 thought 12:11 16:22 25:2 36:17 three 7:18 12:22 14:13,15,22 15:15 25:8,10 thumb 35:25 thursday 7:20 time 5:16 8:12,23 9:2 12:2,14 21:12 31:24,24 32:11,22 34:10 35:20 36:3 37:8,11,14,17 times 6:3 25:10 timing 6:16 tiring 37:14 tobacco 4:10 today 4:2 6:1 tomorrow 6:3,11,25 7:12,16 31:25 37:19 topics 9:13 10:1 totally 17:4 27:6 transcribed 2:25 transcriber 39:7 transcript 9:7,25 10:3 36:23 39:3 transmitting 13:1 treated 27:18 tremendous 31:22 trial 5:6 8:3,25 9:5 9:17,18 12:2,11 22:8 28:1 31:21 33:8 34:24 36:1</p>	<p>true 14:9 39:4 truth 14:14 15:20 16:12 try 23:11 24:22,22 32:22 34:18 trying 16:5 17:20 25:7 29:23 35:12 tsa 3:12 10:13 14:6 17:4,17 19:13 22:9 tsa's 17:7 18:23 two 7:1,18 10:12 12:15,16,21 17:2 23:2 31:15 34:21 type 21:16</p>
u			
<p>u.s. 1:13,22 uh 25:14 understand 4:12 5:3,19,25 11:14 13:11 30:14 33:16 understanding 33:5 understood 10:18 11:25 18:13 undertaken 18:17 undocumented 15:7 unfold 16:9 unique 21:20 24:2 united 1:1 unrelated 18:1 use 10:2 27:5 31:15 33:3,4 34:4,24,25 35:1,4 useful 26:10 36:17 usually 31:1</p>			
v			
<p>v 3:19 valuation 5:6,10,11 5:13 13:4 14:3 valued 2:3 veritext 39:9 video 35:19,22,25 36:5,16,18 view 17:12 vis 17:19,19</p>			

[voir - à]

Page 8

voir 21:5,6	x
volume 31:3	x 1:4,11 38:1
volumes 31:4	y
w	yeah 5:3 7:4,6 10:22
w 3:7,8	16:17 21:8,11,13
wa 3:15	24:18 25:12 26:6
wait 19:25 20:8	28:11,17 29:19 32:7
23:18	32:19 33:1 34:12,14
waived 36:13	34:16 35:17 37:11
want 6:6,7 10:8	years 19:17
12:9 13:10,16,21	york 1:2,15,15 3:5
20:23 21:8 24:7,13	16:1
27:14,20 31:14	z
32:22 33:10,14,16	zero 5:9
33:16 35:24,25	à
wanted 6:2 12:12	à 17:19
18:12 35:24 37:9	
washington 4:10	
10:13 14:6 17:3,7	
17:17	
way 8:22,23 14:15	
20:3 30:12 34:19	
37:12,13	
we've 7:25 17:4	
20:10 22:13 25:22	
26:10,19 30:24	
32:20 36:5	
wednesday 7:13,14	
7:19	
weeks 25:22	
weight 12:20	
witness 7:21 9:1,11	
9:18 16:14,15 25:2	
26:13 31:9,9,20	
33:21 34:23	
witness's 10:1	
witnesses 6:9,10,15	
22:10,14 31:12	
33:17 37:17	
words 19:17 20:6	
works 32:9	
write 8:23	
writes 14:11,12	
wrong 8:21 24:9	